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**THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH**

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**THOMAS ALVORD,**

*Plaintiff,*

**v.**

**ON DECK CAPITAL, INC.,**

*Defendant.*

**ANSWER TO PLAINTIFF'S  
AFFIDAVIT AND SUMMONS**

**Case No. 2:19-cv-00177-EJF**

**ANSWER TO AFFIDAVIT AND SUMMONS**

Defendant On Deck Capital, Inc. (“OnDeck” or “Defendant”) files this Answer to Plaintiff Thomas Alvord’s (“Plaintiff”) Affidavit and Summons (“Affidavit”). In response to the Affidavit, OnDeck states as follows:

1. OnDeck denies the allegations in Paragraph 1. By way of further response, OnDeck denies that it is liable to Plaintiff for the damages alleged.
2. OnDeck denies the allegations in Paragraph 2. By way of further response, OnDeck specifically denies that it made phone calls to Plaintiff in violation of the Telephone Consumer Protection Act (“TCPA”). OnDeck further denies that it used any prerecorded voices to call Plaintiff and denies that Front Lead Capital is a d/b/a for OnDeck.
3. Paragraph 3 asserts a legal conclusion regarding jurisdiction to which no response is required. To the extent such assertion is contrary to the law, it is denied.

4. Paragraph 4 refers to the documents initiating the instant lawsuit to which no response is required. To the extent such assertion is different from the documents, it is denied.

5. In response to Paragraph 5, OnDeck is without information sufficient to form a belief as to the truth or falsity of the information, and therefore denies the same.

6. Plaintiff does not make any allegation in Paragraph 6, and therefore no response is required.

**AFFIRMATIVE AND OTHER DEFENSES**

1. Plaintiff consented to the calls placed by OnDeck.

2. Plaintiff's claims were caused by his own acts and omissions.

3. Plaintiff is equitably estopped from asserting his claims, and damages which he associates with the same, as the statutes on which he relies were not intended to protect individuals who encouraged the telephone calls at issue.

4. Plaintiff, by indicating that he was interested in a business loan, admits that the interaction was business and not personal and therefore does not obtain any personal protection arguably afforded by his personal causes of action.

5. Plaintiff's claims were caused by third parties over whom OnDeck has no control.

6. Plaintiff's claims are barred because he comes to this Court with unclean hands.

7. Plaintiff's claims are barred to the extent they are barred by any subsequent orders or rules promulgated by the Federal Communications Commission.

8. Plaintiff has waived his rights to assert his causes of action.

9. Plaintiff is barred from recovery to the extent Plaintiff failed to mitigate his alleged damages.

10. Plaintiff has acknowledged that the alleged calls from OnDeck are not the basis of his claim and, therefore, Plaintiff cannot state a claim upon which relief may be granted.

11. OnDeck reserves the right to add additional affirmative defenses as they may become available or applicable following discovery in this matter.

Dated: March 21, 2019

Respectfully submitted,

**ON DECK CAPITAL, INC.**

By: /s/ Jennifer Mathis

Jennifer Mathis (Utah Bar No. 11475)

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*Counsel for Defendant On Deck Capital, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21<sup>st</sup> day of March 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, and I further certify that a true and correct copy of the foregoing was sent via first class mail to the following counsel of record:

**Thomas Alvord, *pro se***  
**10782 N La Costa**  
**Cedar Hills, UT 84062**  
**Telephone: (801) 735-1968**  
**Email: thomasalvord@gmail.com**

*Plaintiff*

Dated: March 21, 2019

Respectfully submitted,

**ON DECK CAPITAL, INC.**

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